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REPORTS

NOTES OF THE WEEK

The Queen's Speech on the Opening of Parliament

The Queen opened Parliament last week with all the traditional ceremonial splendour but with a difference aptly summed up in the sonorous closing words of her gracious speech:

"To-day for the first time this ceremony is being watched not only by those who are present in this chamber but by many millions of my subjects. Peoples in other lands will also be able to witness this renewal of the life of Parliament. Outwardly they will see the pageantry and the symbols of authority and state; but in their hearts they will surely respond to the spirit of hope and purpose which inspires our Parliamentary tradition. In this spirit I pray that the blessing of Almighty God may rest upon your counsels . . ."

Although all the colour and atmosphere of the great ritual could not be conveyed by the television screen there can be no doubt that a vast audience outside shared with the occupants of the crowded chamber the substance of the ceremony and something more. They will recall it all—the Queen, the central figure on the Throne, in a dress of shimmering brilliance reading in a calm, clear voice the speech, handed to her by the sturdily built Lord Chancellor, with her Prince Consort at her left hand and flanked by the attendants of her Court. In front of her the nobility both hereditary and for life and behind the Bar Mr. Speaker and her faithful Commons.

Some aspects, of course, were probably lost to them, the wider audience—the bewigged Judges in scarlet and ermine, for all the world like a clump of geraniums, the Moroccan Ambassador in striking diplomatic dress full of African colour and a fair peeress with an enormous tiara shaped like a bishop's mitre. . . . The atmosphere of excitement in the chamber as the Queen approached through the Royal Gallery until the fading of the previously blazing lights of the Lords chamber proclaimed the imminence of her entry and the great concourse stood in profound silence. On the other hand the roving television camera covered not only the chamber of the House of Lords but the procession down the Royal gallery and the royal arrival at the Norman Porch entrance, and, in these respects at least, the tele-viewer had an advantage denied to the supposedly more fortunate.

As to the contents of the speech local government affairs had a number of important mentions. Included in it were the administration's intentions about extended facilities in the sphere of higher education and the improvement of secondary education.

The speech also foreshadowed Bills to improve the basis of compensation for compulsory acquisition of land, to give further encouragement to house ownership and to provide for the future management of the New Towns in England and Wales.

Of special significance to the magistracy was the following: "My Government view with gravity the increase in crime. In the light of the most up-to-date knowledge and research they will seek to improve the penal system and to make methods of dealing with offenders more effective . . ."

Interesting, too, in relation to the rights and liberties of the subject was the intention to "seek specific statutory sanction for the continuance for a temporary period and in a restricted form of certain economic controls deriving from war-time emergency powers . . ."

In the afternoon Mr. Peter Thomas, member for Conway, and Mr. David Price, the representative of the Eastleigh Division of Hampshire in felicitous and graceful terms respectively moved and seconded the traditional vote of thanks to Her Majesty for her gracious speech and another milestone in British constitutional history had been passed. Television for the State Opening had come to stay!

Neglect to Maintain

The fact that a husband is paying maintenance to his wife under an agreement is not necessarily a bar to the making of an order under s. 43 of the National Assistance Act, 1948, in excess of the agreed amount if the court considers the agreed amount not

reasonable, *National Assistance Board* v. *Prisk* (1954) 118 J.P. 194. The converse position was considered by the Divisional Court (Lord Merriman, P., and Hewson, J.) in *Jones* v. *Jones* (*The Times*, October 16). The husband appealed against a maintenance order made by justices on the ground of wilful neglect to provide reasonable maintenance for his wife.

The husband was paying a weekly sum under an order made by the justices in pursuance of s. 43 of the National Assistance Act, but it appeared that this sum was no longer sufficient for her needs, and the justices accordingly found her case proved.

In delivering judgment, the learned President referred to the case of *Tulip* v. *Tulip* [1951] 2 All E.R. 91, which established the principle that although a man was paying his wife an agreed allowance the court was not thereby precluded from making an order if, owing to changed circumstances, the agreed amount was no longer adequate. Lord Merriman said that the same principle applied where the payments were under an order under s. 43. In the present case, however, the need of the wife had never been brought to the notice of her husband, and therefore it could not be said that he had neglected to provide her with reasonable maintenance. For this reason the appeal must be allowed.

In these days, when the value of money is constantly changing it is inevitable that a sum considered sufficient, and consequently agreed upon or ordered, will not infrequently prove insufficient in the course of a few years, and it is satisfactory that the law permits a court to do what is reasonable, in all the circumstances of the parties, to adjust matters so as to avoid hardship to either of them.

Provisional Driving Licences

We are growing accustomed to the fact that the passing of an Act of Parliament does not mean that there is any immediate change in the law because "this Act shall come into operation on such day as the Minister may by order made by statutory instrument appoint, and different days may be appointed for different provisions of this Act."

The Road Traffic Act, 1956, was passed on August 2, 1956. Many of its provisions are now in force but s. 18 (1) is still to be brought into operation. The matter with which it deals has for long urgently required attention, and we have from time to time referred in these notes to cases of provisional licence holders continuing to drive without ever bothering to take a test. In the September number of *Road Safety Notes* issued by the West Riding constabulary are given, in Parliamentary Notes, questions and answers about s. 18 (1) and its coming into force. Mr. Nugent replied that the subsection will be brought into force as soon as the Ministry are satisfied that the increase which it seems likely to cause in the number of applications for a driving test will not unduly lengthen the period drivers have to wait for a test appointment. A supplementary question pointed out that the Act was passed over two years ago and that "the fact that a provisional licence holder can go on and on is causing disquiet in road-safety circles." The reply to this was that this was appreciated and it is desired to bring it into force as soon as we "practicably can." Meanwhile we must accept that accidents may come and accidents may go but provisional drivers go on for ever.

Police Training in New Zealand

There is an interesting article in the October, 1958, number of *Forefront* (a Monthly Survey of New Zealand Affairs) entitled "Police Force with a New Look." It gives information about an "intensive training programme to strengthen the police force and improve its service to the community." It is stated in the article that previously men of insufficient educational attainment were allowed to join and the training of recruits consisted of placing them from eight to 10 weeks in barracks to listen to lectures all day from one sergeant on every topic from beat duty and simple detection to the law of evidence and procedure. The same sergeant was also responsible for the running and general administration of the barracks.

All this has now been changed. Candidates who have not completed four years in a secondary school are required to pass a special entry test. A recruit has an initial training course of 13 weeks in a police school under a group of instructors who are assisted by outside experts and specialists. Physical training is not neglected. After his 13 weeks the recruit does general police duties under supervision, combined with part-time study in law and in police practice. This is all a probationary period which ends with a second period, this time of four weeks, at the police school 18 months after his initial course. The article gives further details of the methods used in training. The age limits for joining are between 19 and 35.

The New Zealand police have also begun a cadet scheme which provides for a 19 months' course at the police school for youths between 17 years and 18 3/12 years. It is claimed that this scheme will produce the best-prepared constables ever to walk the beat in New Zealand and that "their educational level, with allowances for specialization, will approximate that of a second-year university student."

To assist those members of the force who joined before the new training programme was started, refresher courses have been arranged, and at some time during the past three years nearly every non-commissioned and commissioned officer has "gone back to school."

New Zealand's experience has obviously been the same as ours, that modern conditions make demands on the police force which require training methods adapted to produce modern policemen. Only thus can the force do its job of preventing and detecting crime.

The Aged Driver

We should all have sympathy with those who, through no reason than that of increasing years, lose some of the ability they formerly possessed to do various jobs required of them, but this sympathy must not blind us to the danger which can be caused on the roads by drivers whose age is such that they have lost the alertness and quickness of reaction which modern conditions on the roads require drivers to possess.

These thoughts are prompted by reading a report in the *Newcastle Journal* of October 3 of a case in which a 76 year old woman motorist was convicted of careless driving. She was fined £15, plus costs, and disqualified for one month. The evidence was that she drove through a town zig-zagging from side to side and making it difficult for cars to overtake her. Another driver stopped her. When she moved off again her car slid back and struck another vehicle. Her advocate explained that she had driven 90 miles and was "simply dead beat." He said that she was prepared to undertake not to overtax herself in such circumstances again.

Ninety miles is not any great distance to drive and one is forced to wonder whether a driver who is completely exhausted at the end of such a distance is at any time as alert and responsive as she should be. One course which is open to a court in the case of a driver who is convicted of dangerous driving, careless driving, or driving whilst under the influence of drink, is to order that he be disqualified until he passes a driving test. It is worthy of consideration whether this is not an appropriate order in the case of an elderly driver whose powers seem to be failing so as to raise doubts as to his suitability to continue at the wheel. Sympathy for the elderly must not outweigh considerations of the safety of other road users. The decision in such cases is not easy to arrive at.

Mother Should have Known Better

Reference is frequently made to the irresponsibility of many young people today, leading to the commission by them of offences which are often quite serious ones. The least that can be expected of parents is that they will do nothing to encourage such irresponsible behaviour. In the *Hereford Citizen* of October 3 there is, however, a report of a case in which a mother was clearly responsible for encouraging her 16 year old son to drive a car. As a result she had to admit aiding and abetting him to drive a car while under age and to causing him to drive when there was no insurance policy in force to cover his driving. She was fined a total of £25.

The boy was stopped while driving the car and he said that he had been taking a friend home and added " Mum knows, she paid for the petrol."

There can be no valid excuse for such behaviour by a parent, and it is to be hoped that the £25 represents a substantial sum to this mother which she will be able to pay only by some sacrifice and inconvenience, and that she now does appreciate the gravity of her conduct.

Facilities for Appeal

In the past, whenever there was a proposal to widen the rights of appeal in criminal cases, there were opponents who contended that the result would be a flood of frivolous appeals. This was seen at various times when the right of appeal from a magistrates' court was extended or facilitated, and there was opposition even to the establishment of the Court of Criminal Appeal.

Today there is a wide right of appeal, and, as far as we can tell, there are very few frivolous appeals. Moreover, it is not only that statutes have given a right of appeal, there are real facilities for it. A right may be real, or it may be illusory because of obstacles such as want of means or the existence of hampering conditions. There is little of this kind of difficulty at the present time, whatever may have been the position in the past.

One point that exercises the minds of some people in relation to the matter is that it is necessary to obtain leave to appeal in certain cases. They should find reassurance in the action of the Court of Criminal Appeal in the case of *R.* v. *Becker* (*The Times*, October 21). The applicant asked leave to appeal against conviction of offences relating to bankruptcy, and the Court, after considering the summing-up at the trial and the voluminous documents put forward by the applicant, felt unable to find any ground for interfering with the conviction. Streatfeild, J., who delivered the judgment, referred to the very sad position in which the applicant found herself, and added that she had not yet asked leave to appeal against sentence. If she wished to do so, the Court would be prepared to grant an extension of time for applying, and would contemplate a reduction of sentence.

Custody Order made without Jurisdiction

The powers of a magistrates' court to make orders under s. 5 of the Summary Jurisdiction (Married Women) Act, 1895, include the power to make an order giving custody of the children of the marriage, being under 16 years old, to the applicant. This is where the wife is the applicant. Where the husband is the applicant for an order of separation, *e.g.*, under s. 5 of the Licensing Act, 1902, the court has power to make an order as to the custody of the children, and it is not restricted to granting custody to the applicant.

This distinction has to be borne in mind, and if the court, upon hearing an application by a wife, is minded to give her a maintenance order but to grant legal custody to the husband, it can achieve its object by granting the husband a summons under the Guardianship of Infants Acts and hearing the parties on the question of custody, with power to make what order it thinks fit.

In *Smith* v. *Smith* (*The Times*, October 24), the justices had heard a wife's complaint based on allegations of persistent cruelty, desertion and neglect to maintain. They made an order on the ground of desertion, and included a clause granting custody of the children to the husband. On appeal the Divisional Court set aside the order as to custody and remitted the case to be heard before different justices, the parties being free to apply for summonses under the Guardianship of Infants Acts. Lord Merriman observed that the order was made without jurisdiction.

Consecutive or Concurrent Sentences

In R. v. *Newton* (*The Times*, October 15) the Court of Criminal Appeal substituted concurrent for consecutive sentences passed upon a medical practitioner upon his conviction of manslaughter and of unlawfully using an instrument to procure a miscarriage. He had been sentenced to three and two years' imprisonment respectively, the sentences to run consecutively. The application for leave to appeal against sentence was granted and the hearing treated as the appeal.

Counsel for the appellant submitted that the applicant had been given separate and consecutive sentences for what was really the same offence, and further that the learned Judge had sentenced the applicant on the basis that he was a professional abortionist, though the evidence was to the contrary.

In delivering the judgment of the Court Lord Parker, C.J., accepted counsel's argument and observed that the jury specifically acquitted the applicant of criminal negligence other than by the use of the instrument. If the jury had found the applicant guilty of criminal negligence outside the use of the instrument there would have been grounds for consecutive sentences, but where, as here, it was in effect one offence, it was wrong in principle that there should be consecutive sentences. Moreover, words addressed to the applicant by the Judge when pronouncing sentence indicated that the Judge must have had in mind that the prisoner was a professional abortionist. There was no evidence of that and it ought to have been treated as an isolated case.

Upon the question of two punishments for a single act or omission, s. 33 of the Interpretation Act, 1889, provides that where an act or omission

constitutes an offence under two or more Acts or both under an Act and at common law, the offender shall be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence. In *R.* v. *Newton, supra,* there were of course two offences charged and, as indicated by the Lord Chief Justice if there had been evidence of criminal negligence, apart from the use of the instrument, there could have been two convictions, but the principle that a man should not be punished twice in respect of a single act was recognized.

Probationer Not to Frequent Licensed Premises and Clubs

Subsection (2) of s. 2 of the Probation of Offenders Act, 1907, as substituted by the Criminal Justice Administration Act, 1914, dealing with conditions that might be inserted in a probation order, gave great latitude to the courts, and it gave as examples of conditions suitable to be included in certain cases a condition as to residence or abstention from intoxicating liquor. The mention of abstention from intoxicating liquor was no doubt due to the fact that in 1914 there was a great deal of drunkenness and that much crime was in part due to excessive drinking. However, probation officers were heard to say that such a condition was difficult to enforce because breaches were rather unlikely to be detected, especially if a probationer chose to indulge in intoxicants in his own home. A condition that was easy to break with impunity was valueless and tended to undermine the position of the probation officer. Thus it became less common for such a condition to be included in an order. The reference to abstention from intoxicating liquor does not appear in s. 3 of the Criminal Justice Act, 1948, but of course there is still power to insert such a requirement in a probation order.

The Court of Criminal Appeal, in *R.* v. *Woodhouse* (*The Times,* October 21), substituted probation for three years for a sentence of imprisonment and included in the order a requirement that the appellant should not frequent public-houses or clubs in which intoxicating liquor was supplied. This, it will be noted, was not a requirement of total abstention, but only a prohibition of visits to places in which, it may be assumed, the appellant was inclined to drink too much. Such a requirement should not be so difficult to enforce as one requiring total abstention, although it may not prove easy unless the probation officer can devote a good deal of attention to the case and succeed in finding other ways for the probationer to spend his time away from temptation.

Noisy Music

Most of us are familiar with the not unmusical notes, sometimes even the tune, which announces the presence in the street of the man with the ice-cream cart, and it is evidently a welcome sound to many, judging by the rush to the cart. To some people it is by no means a pleasant sound, and in some areas a byelaw prohibits it, as was illustrated in the case of *Raymond* v. *Cook* (*The Times,* October 21).

The byelaw was invoked against an ice-cream vendor who sought custom by using a musical box and an electric amplifier, playing a tune which a police witness recognized, though he could not remember its name. The vendor was summoned for using a noisy instrument in a street, for the purpose of selling his wares, to the annoyance of inhabitants. He was fined in respect of two offences on one day, and appealed by Case Stated.

There was evidence of a complaint on each occasion by a night-shift worker who was disturbed by the sounds.

Shortly, the argument for the appellant was that this was a musical instrument, and therefore not one to be described as noisy. The Lord Chief Justice, in delivering judgment dismissing the appeal, entirely rejected this argument. There seems also to have been a point about only one inhabitant complaining, but this also failed.

Thus it has been made plain that there can be no hard and fast division between musical instruments and noisy instruments. In *Paget* v. *Phillips* (1890) (*The Times,* January 14 and 30), a member of the Salvation Army was held guilty of using a noisy instrument, for the purpose of collecting a congregation, contrary to s. 54 (14) of the Metropolitan Police Act, 1839, the instrument being a drum. Now there is no doubt that a drum is a musical instrument and a great acquisition in a military band or an orchestra, but it can be very noisy, and pleasantly so, as for example in the popular "1812." Cymbals, too, are noisy, but worthy of the name of musical instrument when rightly employed. Music is, or should be, pleasing noise. What the byelaws aim at is preventing street noises by traders and others, however musical, if they are reasonably calculated to annoy some inhabitants. The man who is trying to get some well-earned sleep may have to put up with the brilliant but noisy playing on her piano by the girl next door, but he can be spared from the annoyance of some, at least, of the noises that come from the street.

Criminal Responsibility of Child

A case reported under the title of *X* v. *X* in *The Times* of October 24 concerned the question of the capacity of a child, just under the age of nine years, to commit crime, he having been found guilty and placed on probation for breaking and entering and stealing. The juvenile court had heard that the boy had been well brought up by respectable parents and that apart from this one offence there was nothing against the boy's character. An appeal to quarter sessions was dismissed. It had been there argued that there was no evidence to rebut the presumption in favour of a child between eight and 14, but quarter sessions found, having regard to the nature of the offence, and the boy's statement, that he was of sufficient understanding and judgment to know that what he was doing was wrong.

From quarter sessions the appeal was by Case Stated to the Divisional Court. In the course of his judgment, Lord Parker, C.J., said that quarter sessions had directed its mind to the question of the presumption, and had found evidence that it was rebutted. To succeed in his appeal the appellant must satisfy the Court that there was no evidence that the child was of sufficient understanding to form a criminal intent. Here there was evidence that the boy was well brought up, by respectable parents. It was not a question of what the Court would have decided but whether there was evidence before the justices. There was evidence, and the appeal must be dismissed.

When one comes to think of it, the fact that a child comes from a good home and has good parents, does make it more likely that he would know when he was doing wrong than would another child coming from a bad home in which he had not the benefit of a good example and was trained to have high standards.

MAN'S PREROGATIVE

(*Continued from p. 715, ante*)

If we rightly understand para. 29 of the Report of the Select Committee, they think that the consent of the Director of Public Prosecutions should always be required not merely to a prosecution but also to proceedings under Lord Campbell's Act. We strongly agree as regards prosecutions, and we should not dissent, in regard to the Act, at the stage when magistrates are asked to make an order for destruction. At that stage the books or pictures will already have been seized, and therefore be out of circulation for the time being, and there will if our earlier recommendation, now endorsed by the Select Committee, is adopted be a pause while the publisher, and if possible the author or artist, is made aware of what is happening. We are however not sure but that the Select Committee have fallen at this point into the trap we have already indicated, of confusing a prosecution with proceedings *in rem*. For our part, once it is accepted that something on the lines of Lord Campbell's Act shall remain (and we have not disputed this) we should be content to see the order for seizure granted by magistrates at the application of the police, without reference at that stage to the Director of Public Prosecutions. We would also accept the detailed recommendations of the Select Committee in paras. 36 and following, to facilitate the task of the police; these recommendations deal with technical obstacles which in a century's experience have been proved to exist. They may provide a "let out" for some defendants, but they are unrelated to the merits. What the merits do require in proceedings under Lord Campbell's Act is, above all, that the author or artist, the publisher and wholesaler, and any other persons who are going to be adversely affected in their reputation or their pockets by an order for destruction, shall have the opportunity of appearing and resisting such an order. There does not exist under Lord Campbell's Act the complication about admitting them to be heard, which exists when there is a prosecution, and under Lord Campbell's Act the temptation on the retailer to cut his losses and let his stock be destroyed will be even greater than it is if he is prosecuted.

To sum up what we have said so far: we agree with the Select Committee about the definition of obscenity. We do not dissent from their rather hesitant conclusion that persons into whose hands a book or picture is likely to come will have to be considered, even though it is not intended that the book or picture shall come into their hands. We agree that the procedure established by Lord Campbell's Act should be continued; that purely technical obstacles in working it should be removed, and (contrary to what seems to be the opinion of the Select Committee) we do not ask that the Director of Public Prosecutions should be brought into procedure under that Act until an order for destruction is to be applied for.

There was a good deal of evidence from the police about an informal practice which has grown up, of their obtaining disclaimers from the person, normally a retailer, in whose hands books or pictures have been seized. This means in effect that he tells them that he is not sufficiently interested to resist an order for destruction, and will not do so if such an order is applied for. The practice then is, it seems, for the police to destroy without applying for a formal order.

We can understand the convenience of this, the saving of public time to the police and magistrates, and the apparent undesirability of bringing a case before the magistrates as a pure formality. It may also be argued on behalf of the police that a disclaimer followed by destruction operates privately, and does not do the same damage to the reputation of authors, artists, and publishers as might be done by an order for destruction.

Nevertheless the practice seems to us to be wholly bad. It is capable of obvious abuse, and, apart from this, we do not think an executive authority ought to destroy, without judicial warrant, the property of a private person when (as with books and pictures) his interest in that property is insignificant compared with the interest of persons who are not its owners. At the cost of repeating what we said in 1954, and have already said again in the present article, we must point out that the retailer of books or pictures will usually find it better business to sacrifice the portion of his stock which has been seized, and to remain on relatively good terms with the police, than to resist them and incur the costs of defending his stock before the magistrates. Despite the absence of publicity, the effect may be extremely deleterious to other persons, and once an object has come into the hands of the police in accordance with an order from the magistrates we do not consider they should dispose of it without a further order of the magistrates, which would (in accordance with our earlier recommendations and those of the Select Committee) involve communicating with the publisher, and should, in our opinion, never be applied for without the consent of the Director of Public Prosecutions.

From the two main forms of proceeding used within the country to check obscene publications, we pass to control exercised against imported works. The Commissioners of Customs and Excise submitted memoranda to the Select Committee (pp. 47 and 55 of H.C. 122), and their solicitor and other officers of the Board gave oral evidence in reply to questions 369 *et seq*. In 1956 there were 108 seizures on the ground of indecency, of which 90 involved books; most of these were evidently seizures of several articles, for under the heading "number of articles" we find that 488 books were taken from private persons and 17 are classified as "trade importations." By a coincidence the total of 505 books is practically the same as the total of photographs, which was 504, though this total of pictorial matter is nearly doubled if one adds 421 "prints," apparently something other than photographs, and the 55 negatives and four films—all seized from private persons. It appeared in the second memorandum at p. 57, that there were 110 different book titles of 505 books seized. It is of transient, if minor, interest to note that, as well as books, 89 magazines were seized, all from private persons, but the witnesses said that Customs officers would never stop ordinary magazines such as *La Vie Parisienne*.

Of the 505 books seized in 1956, the memorandum stated that 442 "bore the clear imprint of pornography and would have been condemned by any court." The remaining 63 comprised 12 different works, "most of which had been condemned by magistrates (in this country) as a result of police action."

It is presumably among the minority within this last group of 63 that there fell the book of Jean Genet, seizure of which by the Customs towards the end of 1956 gave rise to a leader in *The Times* of December 27, 1956, and questions in the House of Commons in 1957. This episode was mentioned by the Customs in their first memorandum (p. 48 of H.C. 122), as a case involving literary issues as well as the question

of obscenity. Such cases are recognized as difficult; the memorandum says that the solicitor to the Board of Customs would be consulted; also the Director of Public Prosecutions, and, where appropriate, the Home Office, before a decision was taken. The inference might be that in the case of Monsieur Genet's book these consultations took place; but the oral evidence from the Customs at questions 489 *et seq.* throws doubt on this. Although the seizure which became a public scandal occurred in 1956, the witnesses stated that Monsieur Genet's collected works in two volumes had been stopped by a Customs officer in 1952, when the head office ruled that the two-volume edition was obscene, and that edition, perhaps others, had been stopped automatically whenever anybody had desired to bring them in since 1952. However this particular seizure originated, it seems (upon the information given in *The Times* on the authority of the Government or government departments, and now in the evidence before the Select Committee) to afford a perfect example of every flaw or fault in the existing system of control. We dealt with it at 121 J.P.N. 226, in some detail, and we need not here do more than remind readers that Monsieur Genet admits in his own published works being an ex-criminal and sexual pervert, but he is regarded by many competent French critics as an important literary figure: a prose writer of distinction, apart altogether from the question whether the subjects on which he writes need to be studied upon public grounds. Notably, he has been "taken up" and praised to the point (some consider) of extravagance by Monsieur Jean-Paul Sartre, and in his collected works (already available in French in municipal libraries in London) a large part of the first volume consists of an essay by Sartre analysing Genet's work in relation to the story of his life. *The Times Literary Supplement* remarked that this essay (by Sartre on Genet) "will be remembered in the history of philosophy itself." Moreover, and this apart from literary quality, great importance has been attached to Genet's writings by a reviewer in *The British Journal of Delinquency*, as an illustration of the mentality with which organized society has to cope in fighting crime and in seeking reformation of the criminal. Thus we find a work published in French which (even if its language had not provided a safeguard against corrupting anybody in this country) was yet considered by responsible people so important that the risk might have to be incurred: the risk anyhow was negligible because nobody except a criminologist or an adult student of sociology would make the effort to read it.

(*To be continued*)

THOUGHTS ON LOCAL GOVERNMENT RE-ORGANIZATION

[CONTRIBUTED]

The Local Government Act, 1958, has now become law, and presumably in the next two or three years proposed boundary changes will be discussed and argued about throughout the country. Some small authorities will no doubt disappear, some larger authorities may be split up, or, which is perhaps more likely, may be made larger still; and some district councils will be accorded the somewhat doubtful advantages of delegated health and welfare functions. What is clear, however, is that the pattern of local government that will result will not be greatly different from that existing at present. There may be a few more county boroughs and a few less county districts, and something a little more drastic may be done in the conurbations, and a few, probably very few, ancient boroughs will have to swallow the indignity of becoming "rural boroughs."

Now that it seems clear that all the disturbances that even these changes will cause, will in the end result in the mixture being very much as before, it seems a pity that the whole problem of reorganization has not been looked at more drastically, and that more prominence has not been given to functions. After all, the size and nature of a local authority must be governed very considerably by the nature and scope of the functions that authority is to be required to perform. Also, there is nothing sacrosanct about the functions that are to be entrusted to local government—sufficient functions should be given to individual authorities to make them viable units of administration, and those functions should be selected which are of direct interest and importance to the life of the local community. The defence of the realm and the siting of radar defence stations for example, though obviously at times matters of local interest, could not be entrusted to local authorities, but the collection of garbage, which could probably be organized efficiently centrally, is essentially a local service. Some services that are at present administered by local authorities would however, it is suggested, be better administered centrally, and if they were taken away from local government, this would leave local authorities with more resources, time and energy to administer the remaining existing services and other services at present under the central government which could well be transferred to them.

In the first place, it is suggested that the police forces should be taken away from local government—not because local government has failed to administer the police efficiently, but rather because the developments of modern civilization have made it desirable that the detection and prevention of crime should be organized on a national basis. At present the resources of the several local forces and the opportunities for promotion within those forces vary greatly, and the price paid for such variety in lack of general efficiency is too high. Local independence in this service is not really so very great in practice. The members of borough watch committees and of the standing joint committees in the counties (where the councillors have to share their powers with magistrates) have very few matters of policy placed before them; they cannot intervene in matters of detail, the officers of the force are not even, in law, servants of the local authority, and even on such apparently domestic matters as the appointment of the chief constable, they are subject to very close Home Office supervision. If the suggestion that traffic police should be separated from the "ordinary" police, on the French pattern, were to be adopted, the divorce of police work from the local authority would become even more necessary, as traffic problems, like the modern criminals, pay no attention to local government boundaries. The English system of local forces has been applauded by many theorists as a safeguard against the introduction of a "police state," but the only real insurance against dictatorship is a live public opinion and an active Parliament—and the Home Secretary has not often been accused of using the Metropolitan Police for his own political ends.

Secondly—and this will no doubt be regarded as an even more revolutionary suggestion—it does not even seem that a sound case can be made out for the retention of education as a local government service. Section 1 of the Education Act, 1944, provides that it shall be the duty of the Minister of Education to "promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution of local authorities under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area." The emphasis here is clearly on a national policy, and most educationalists agree that in a modern civilized state every child should have an equality of opportunity in education; and yet it is notorious that the proportion of children who are admitted to the grammar schools varies greatly between different education authorities, by reason of the uneven distribution of grammar school places, admission to a grammar school often depending on the accidents of residence. Similarly, some education authorities offer proportionately many more university scholarships than others; some authorities provide nursery schools, others do not; county colleges and further education institutes are unevenly spread throughout the country. Teachers at present look to two masters—the local education authority and the Ministry, as represented by the inspectors, and education may suffer in any dispute between the two. The local education authority, apart from the pure mechanics of administration, have but a small field within which they can exercise any discretion. What is to be taught in "their" schools, what are to be the standards for premises and the qualifications for teachers, and many similar matters of principle, are decided for them by the Ministry, or by statute. The only real privilege still possessed by the local education authority is to foot the bill; and after April of next year, they will have to pay the whole of that bill. The cost of education has now got so large that it is in danger of crippling local authority finances, and in the best interests of local government itself, and certainly of education, it is suggested that this might well become a centrally administered service.

If these two expensive services were administered centrally, it is suggested that the following services, at least, could be entrusted to the local county borough and county district councils:

(*a*) The welfare services could all be transferred from the county councils to the district councils, provided some special arrangements were made for the provision of residential accommodation and mental health. The children's service could be similarly dealt with. This would enable the local district medical officer of health to take the lead in all matters concerned with the health and welfare of the individual.

(*b*) Fire brigades could be returned to the district councils, provision being left for mutual assistance agreements, as under the Fire Brigades Act, 1938. The ambulance service might well be administered as part of the fire service.

(*c*) Gas and electricity distribution should be returned to local authorities. The present extravagant competitive selling organizations of the two industries could be eliminated, and the wasteful and largely ineffectual consumer councils would be no longer necessary. Generation and mains supply could remain the duty of the gas and electricity boards, as at present.

(*d*) The management of hospitals also could once more be a local government service. The work of the existing hospital house committees is well within the competence of any local authority; so is much of the work of the hospital management committees. The regional hospital boards could remain as at present to regulate such matters as the supply of specialists, but if matters well within their competence were left to the local authorities, there would be greater co-ordination within the service, and considerable saving in administrative costs, as well as the advantages accruing from the local administration of local services.

(*e*) Land registration could be de-centralized, and each local authority given the duty of maintaining the land register (as well as the local land charges register) for their own area. In this way compulsory registration of title could rapidly be spread over the whole country, and local solicitors would have the convenience of a local registry.

If the above changes were all implemented, there would be very few functions left with the county councils. The tendency being (and the above suggestions have been made with this in mind) towards the formation of larger district councils and more or larger county boroughs, the position may well be reached where there is no longer any need for county councils at all. These authorities are the furthest away from the influence of the local electorate of all classes of local authority in this country, and their demise would probably be mourned by few. In rural areas, district councils would have to be entrusted with highway duties, but with extended powers in other directions, there is no reason why they should not be capable of carrying out such functions efficiently.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Sellers and Pearce, L.JJ.)

DEMKO *v.* GOVERNOR OF BRIXTON PRISON

October 6, 7, 1958

Extradition—Discharge of fugitive—Power of Court of Appeal—Original, not appellate, jurisdiction—Fugitive Offenders Act, 1881 (44 *and* 45 *Vict., c.* 69), *s.* 10.

APPEAL from Divisional Court.

On appeal by an appellant from an order of the Divisional Court refusing him relief under s. 10 of the Fugitive Offenders Act, 1881, the Crown raised the preliminary point that the Court of Appeal had no jurisdiction to hear an appeal under the Act of 1881.

Held: by the Act of 1881 the Court of Appeal was given only original jurisdiction, and, therefore, the appeal failed *in limine*. *Appeal dismissed.*

Counsel: *Lawton, Q.C.*, and *Merriton*, for the applicants; the *Solicitor-General* (*Sir Harry Hylton-Foster, Q.C.*), *Rodger Winn* and *B. Wigoder*, for the governor of Brixton Prison and the Home Secretary; *J. C. Phipps*, for the High Commissioner for the Union of South Africa.

Solicitors: *Beach & Beach; Director of Public Prosecutions; Jaques & Co.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

INDEPENDENT ORDER OF ODDFELLOWS MANCHESTER UNITY FRIENDLY SOCIETY *v.* MANCHESTER CORPORATION

October 8, 9, 10, 16, 1958

Rates—Limitation of rates chargeable—Friendly society—Society not established or conducted for profit—Benefits payable to non-members—Not organization whose "main objects are charitable or otherwise concerned with the advancement of . . . social welfare"—Rating and Valuation (Miscellaneous Provisions) Act, 1955 (4 *and* 5 *Eliz.* 2, *c.* 9), *s.* 8 (1).

APPEAL from Divisional Court (122 J.P. 1).

The ratepayers were a registered friendly society which had

about 600,000 members and large assets. Its rules provided for payments of benefits to members and their families. Benefits were calculated and paid on an actuarial basis, but the society had discretionary power to pay a benefit to a member not otherwise entitled to receive it. The society's income was mainly derived from the contributions of the members and accumulated funds, a relatively small amount being received from other sources which included donations. The society was not established or conducted for profit. On the question whether the rates on a hereditament occupied by the society should be limited pursuant to s. 8 (2) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, the Divisional Court decided that the society was not an organization whose objects were charitable or otherwise concerned with the advancement of social welfare within s. 8 (1) (*a*). On appeal,

Held: looking at all the main objects of the society as a whole, it could not be said that all its main objects were concerned with, *i.e.*, directed to, the advancement of social welfare, and, therefore, the appeal failed.

Appeal dismissed.

Counsel: *Sir Andrew Clark, Q.C.*, and *Glidewell*, for the society; *Squibb, Q.C.*, and *Hinchliffe*, for the rating authority.

Solicitors: *Forsyte, Kerman & Phillips*, for *John Gorna & Co.*, Manchester; *Sharpe, Pritchard & Co.*, for Town Clerk, Manchester.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Parker, C.J., Streatfeild and Diplock, JJ.)

LUND *v.* THOMPSON

October 21, 1958

Road Traffic—Notice of intended prosecution—Notice served within 14 days—Letter from police saying they would not prosecute—Letter from police saying proceedings would be instituted—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 21 (*c*).

CASE STATED by a metropolitan magistrate.

An information was preferred at Marlborough Street magistrate's court by the respondent, Thompson, a police officer, charging the appellant, Richard Irvin Lund, with careless driving. A further information was preferred charging the appellant with dangerous driving.

Section 21 of the Road Traffic Act, 1930, provides: "Where a person is prosecuted for an offence under any of the provisions . . . of this Act relating . . . to reckless or dangerous driving, and to careless driving he shall not be convicted unless either (*a*) he was warned at the time the offence was committed that the question of prosecuting him . . . would be taken into consideration; . . . or (*c*) within . . . 14 days [of the commission of the offence] a notice of the intended prosecution specifying the nature of the alleged offence . . . was served on or sent by registered post to him . . ." On February 11, 1958, the appellant was involved in a traffic incident at Eaton Gate in London. On February 14, a notice was served on him signed by the police that it was intended to institute proceedings against him for dangerous driving and driving without due care and attention on February 11. On February 27 another letter was sent to him by the police stating that after careful consideration they had decided not to take any further action in the matter. On March 13 a third letter from them was sent stating that after further consideration the Commissioner of Metropolitan Police had decided to institute proceedings against him. The magistrate was of opinion that the notice sent on February 14 was valid and had not been invalidated by subsequent events. He dismissed the charge of dangerous driving and fined the appellant £5 on the charge of driving without due care and attention to which he pleaded guilty.

Held: that once notice of intended prosecution had been given, it mattered not by whom, the only conditions precedent to prosecution had been fulfilled, and it was impossible to read words such as "and has not been withdrawn" into s. 21 (*c*); the practice adopted in the present case was not one which, in the opinion of the Court, should be followed, but the appeal must be dismissed.

Counsel: *Binney*, for the appellant; *Machin*, for the respondent.

Solicitors: *Amery-Parkes & Co.; Solicitor, Metropolitan Police.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PRATT *v.* BLOOM

October 20, 1958

Road Traffic—Careless driving—Taxicab—Erroneous signal—Indicator then changed from right to left—Failure of justices to convict—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 12.

CASE STATED by Middlesex justices.

An information was preferred by the appellant, Pratt, a police officer, charging the respondent, George Bloom, a taxicab driver, with careless driving, contrary to s. 12 of the Road Traffic Act, 1930.

On December 27, 1957, just before midnight the respondent was driving a fare along Great North Way, Hendon, in a northerly direction. Great North Way was a dual carriageway, de-restricted as to speed limit, well-lighted, which carried a great volume of traffic. Just before Tenterden Drive the fare told the respondent to turn left. The respondent put on his right blinking indicator. One Taylor was driving his car along the Great North Way in the same direction as the defendant's taxicab. Taylor, having seen the taxicab's right indicator, was minded to overtake the taxicab on its nearside. The taxicab's fare, seeing the right traffic indicator out, said to the respondent, "No, not right—left." Without taking any precautions to see whether anyone was coming up behind him, the respondent put on his left indicator and turned to the left into the path of Taylor's car. Taylor put on his brakes, but the front offside of his car came into collision with the nearside rear of the taxicab. The justices dismissed the information.

Held: that on the above-mentioned facts it was impossible to say that the respondent was not, at least, careless to cross the path of an oncoming car without seeing whether it was safe to do so, and that the case must be remitted to the magistrates with a direction to convict of careless driving.

Counsel: *Wrightson*, for the appellant; *Everett, Q.C.*, and *M. D. L. Worsley*, for the respondent.

Solicitors: *Solicitor, Metropolitan Police*; *Philip Conway, Thomas & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Parker, C.J., Cassels and Streatfeild, JJ.)

RANDS v. OLDROYD

October 15, 1958

Local Government—Councillor—Indirect pecuniary interest—Consideration and discussion of tenders by borough engineer—Defendant managing director of building company—Local Government Act, 1933 (23 *and* 24 *Geo.* 5, *c.* 51), *s.* 76 (1).

CASE STATED by Isle of Ely justices.

An information was preferred at Wisbech magistrates' court by the respondent, Donald Oldroyd, against the appellant, Leslie Harry Rands, vice-chairman of the housing and town planning committee of Wisbech borough council and managing director of a building firm, for taking part, contrary to s. 76 of the Local Government Act, 1933, in the consideration or discussion of tenders by the borough engineer at a meeting of the council on September 27, 1957, when, being a member of the council, he had an indirect pecuniary interest in the subject under consideration.

Section 76 (1) of the Local Government Act, 1933, provides: "If a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as is practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter . . ." Wisbech borough council had as part of their standing orders rules regulating contracts and in July, 1957, a motion was proposed that the borough engineer, in compliance with standing orders concerning contracts, "shall submit a tender on behalf of his department for any contract that he feels may be within the scope of that department and where necessary the direct labour force be increased in order to implement this policy."

The appellant was managing director of Henry Rands & Sons, Ltd., a company of builders and held 200 of the 300 £10 ordinary shares in the company. The building of council houses was not the kind of work which the company normally did, and the company had not tendered for any council building contracts since 1954. The meeting at which the motion was proposed was adjourned, and the matter came before the general purposes

committee, who reported that they for themselves did not think it desirable to increase the direct labour force. Accordingly, when the matter came back before the council, there was a suggestion that the motion should be amended by allowing, in effect, the borough engineer, as he had always done, to tender, but to delete the words which would enable him to increase the direct labour force and thereby bring more contracts within the scope of his department. On that there was considerable discussion, and the appellant rose to address the council. Objection was taken, but he continued and advocated the amendment of the resolution, in particular saying that, in his view, it was undesirable for the council to take on extra labour.

The magistrates were of opinion that the appellant was sincere in a statement which he made to them that his company did not intend to tender for any further council work and that the appellant throughout had acted openly and honourably, but they concluded that the offence charged was proved, and convicted the appellant, but granted him an absolute discharge. The appellant appealed.

Held: that the mischief aimed at by the Act was to prevent members of local authorities who had occasion to enter into contracts from being exposed even to the semblance of temptation and to prevent a conflict of interest and duty which might otherwise arise; that the words "any other matter" in s. 76 (1) were not to be construed in a narrow sense; that in the present case the company did have a pecuniary interest in the matter under discussion; and that the interest was not too remote to bring them within the words of the section. The appeal, therefore, must be dismissed.

Counsel: *Roy Wilson, Q.C.*, and *Kidner*, for the appellant; *S. A. Morton*, for the respondent.

Solicitors: *Rider, Heaton, Meredith & Mills*, for *Dawbarn, Barr & Knowles*, Wisbech; *Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

REVIEWS

Swift's Housing Administration. Fourth Edition. Stewart Swift and Frederick Shaw. London: Butterworth & Co. (Publishers) Ltd. 1958. Price 87s. 6d. net.

This book first appeared in 1934 when the senior editor was chief sanitary inspector of the city of Oxford. It took its place at once as a practical handbook for those engaged in housing work, both in connexion with the provision of new houses and the various methods of dealing with existing houses which called for attention from local authorities. It has always been a practical guide rather than a purely legal textbook, but the relevant legal provisions are indicated clearly and with sufficient detail for every day purposes. Thus chapter two of the present edition comprises a useful summary of all the Housing Acts of the present century, which will remain wholly or partly operative, and of all those statutes which do not strictly fall within the housing field but have to be borne in mind by those working in that field. Despite successive consolidations of large parts of the Housing Acts in 1925, 1936, and 1957, the law remains involved and in some respects confusing, partly because some of its provisions stand side by side with similar provisions in the Public Health Act, 1936, or its amending statutes. It is constantly found in practice that there is a choice of remedy for some evil which has been discovered, and the local authority ought to be in a position to choose between one code or the other.

It used to be said that housing officials too often existed in a world of their own, apart from the administration of the Public Health Acts, and one of the useful services performed by the first edition of this work was to show how things, which had to be done for the purpose of what might broadly be called housing, could sometimes be done better under the Public Health Acts. This educative process was helped by Mr. Stewart Swift's parallel work entitled *Sanitary Administration*. In the present edition of the work, the features which commended it for practical use throughout the past 25 years have been preserved, but it has naturally been revised having regard, particularly, to the change of emphasis during the present Parliament from the provision of new houses by local authorities to modes of dealing with existing houses. These last may be either clearance, or preservation, or improvement, and the authors fully recognize the case for preserving and improving. There is adequate information here, both upon the legal provisions applicable and upon the practice followed by the most experienced authorities.

At the present day, with the echoes of the Franks Committee still reverberating, and discussion still going on about the merits and otherwise of public inquiries, it is of particular interest to refer to the chapter headed "Appeals—Local Public Inquiries" which contains a wealth of information about the practice; with notes of important cases in the High Court where there has been a ministerial inquiry. Incidentally this chapter contains a number of photographs of houses in a bad state of disrepair, with the evidence in regard to them given by Mr. Swift's successor as chief public health inspector of the city of Oxford.

Altogether this is an informative and most practical book and, subject always to political exigencies and the chance of new legislation, we should expect this fourth edition to have a long and useful life.

Knight's Annotated Housing Act. By S. W. Magnus and Frank E. Price. London: Charles Knight & Co., Ltd. Price £2 10s. net.

The occasion of this work is the passing of the Housing Act, 1957, which brought into one most of the enactments relating to housing, which had previously been consolidated in 1936 but had been pulled about by other statutes since the second world war. The exceptions from the consolidation of 1957 are mainly in the financial field; and these complicated provisions were kept out for separate review by Parliament in the Housing (Financial Provisions) Bill; the publishers of the present work propose to deal with housing finance in a companion volume in due course.

The plan of the volume before us is to treat the law first by way of a general survey, covering about a sixth part of the book and then to annotate the Housing Act, 1957, section by section. For convenience of reference the Housing Act, 1936, and three post-war Acts, are printed in an appendix, with indications of the repeals and replacements effected by the Act of 1957. The first part of the book comprising an historical summary, and then a narrative analysis of the Act of 1957, is well arranged. Although housing law is probably not a subject which is much studied except by administrators, economists, and writers upon social services (all of whom will be more or less familiar with what has gone before), this part of the book will provide them with a readable and convenient summary. In particular, it is difficult to remember what has happened from time to time in the fields of subsidy, and housing loans and advances, and persons who have to look back into history when dealing with some particular problem will find that the chapters on these subjects give them a ready reference to the constant changes which have taken place. Housing is peculiarly a subject which is liable to changes in the working law, brought about by political, financial, and other external causes.

The annotation section by section of the Act of 1957 constitutes the main part of the book. We have tested the notes at several points in relation to particular problems, and have found them generally adequate. The object has been to state the relation of each section to the corresponding section in the Act of 1936, followed by a brief explanation on particular points. These explanations may perhaps be too brief for some purposes—for example, on p. 98 we are told that a general authority may be sufficient for the purposes of s. 6 (3) of the Act, but no reference is given to case law on the subject of general authorities. Again, where the phrase "notwithstanding any agreement to the contrary" occurs, it seems hardly worth while, by way of annotation, to make the obvious remark that the parties may not contract out of the provision. Bearing in mind, however, that the book is intended primarily for use by persons already acquainted with the earlier Acts, we do not wish to find fault with the method of annotation considered as a whole. A particularly useful feature, for the persons for whom the book is primarily intended, is the table of comparisons of the Act of 1957 with the earlier statutes. There are other publications in which that Act has been annotated, and no doubt other textbooks are to be expected, but the learned authors and publishers of the book before us deserve credit for having brought out quickly a work at a reasonable price, which will be generally useful in day to day administration.

PERSONALIA

APPOINTMENTS

The following have been appointed members of the Local Government Commission for England: Chairman: Sir Henry D. Hancock, K.C.B., K.B.E., C.M.G., until recently chairman of the Board of Inland Revenue, and formerly Permanent Secretary of the Ministry of National Insurance (1949 to 1951) and the Ministry of Food (1951 to 1955). (Part-time.) Deputy Chairman: Mr. Michael E. Rowe, C.B.E., Q.C. Mr. Rowe earlier spent four years with the War Damage Commission. He is editor of *Ryde*. (Full-time). The Hon. Ruth Burton Buckley, J.P., an alderman of East Sussex county council, and its chairman from 1952 to 1955. Miss Buckley is also a member of the South-East Metropolitan Regional Hospital Board. (Part-time.) Mr. Bernard D. Storey, C.B.E., at present town clerk of Norwich. (Full-time.) Mr. E. W. Woodhead, M.A., F.R.Hist.S., at present county education officer of Kent. (Full-time.)

The Board of Trade announce the following appointments:

Mr. Norman Saddler has been appointed an assistant official receiver in the Bankruptcy High Court Department. This appointment took effect from October 4, last.

Mr. Royston Bernard Howard has been appointed official receiver for the bankruptcy district of the county courts of Newcastle-upon-Tyne, Durham, Sunderland, Stockton-on-Tees, Darlington and Middlesbrough. This appointment took effect from October 4, last.

Mr. Dennis Sidney Clackett has been appointed an assistant official receiver for the bankruptcy district of the county courts of Ashton-under-Lyne, Blackburn, Blackpool, Bolton, Burnley, Oldham, Preston, Rochdale and Stockport. This appointment took effect from October 6, last.

Mr. Albert Reginald Haigh has been appointed an assistant official receiver for the bankruptcy district of the county courts of Birmingham, Coventry, Dudley, Hereford, Kidderminster, Leominster, Stourbridge, Walsall, Warwick, West Bromwich, Wolverhampton and Worcester. This appointment took effect from October 13, last.

Mr. Walter William Jordan has been appointed official receiver for the bankruptcy district of the county courts of Nottingham, Boston, Burton-on-Trent, Derby and Long Eaton, Leicester, Lincoln and Horncastle. This appointment takes effect from November 29, next.

Mr. J. B. B. Kendrick has been appointed by the Minister of Housing and Local Government, Mr. Henry Brooke, to be chief inspector of audit in succession to the late Mr. H. T. R. Bates. Mr. W. D. Munrow succeeds Mr. Kendrick as deputy chief inspector of audit.

Mr. Robert Hugh Mais is to be appointed a Judge of the West London county court. A member of the Inner Temple, he was called to the bar in 1930.

Mr. Harry Vincent Lloyd-Jones, Q.C., has been appointed a commissioner of Assize on the Oxford circuit. He was appointed recorder of Cardiff in February this year.

RETIREMENT

Mr. Edward Bainbridge, chief constable of Gateshead, retired on October 31, last, after 21 years' service. He was succeeded on November 1, 1958, by Superintendent Robert Walton, of Newcastle-upon-Tyne city police. Mr. Walton, who is 47 years of age, had been at Newcastle since 1931.

OBITUARY

Mr. H. Rowland, clerk to Glamorganshire county council from 1929 to 1943, has died at the age of 83. He was called to the bar by the Middle Temple, in 1915, and was a life governor of the University College of South Wales, Cardiff.

Sir George Clark Williams, Q.C., county court Judge for Glamorgan, from 1935 to 1948, has died at the age of 79. He was called to the bar by the Inner Temple, in 1909, and joined the South Wales circuit in the same year.

Mr. Ernest Russell Gurney, recorder of Pontefract from 1934 to 1935, and recorder of Rotherham from 1935 to 1955, has died at the age of 79. He was called to the bar by Gray's Inn, in 1907.

NOTICES

On November 12, 1958, at 7.30 *p.m.*, the I.S.T.D. lecture in the hall of St. George's Institute, Bourdon Street, Davies Street, W.1, will be "The Juvenile Courts and the Probation Service." Mr. W. C. Todd is the lecturer; Mr. Frank Dawtry will be in the chair.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

"My Government view with gravity the increase in crime. In the light of the most up-to-date knowledge and research, they will seek to improve the penal system and to make methods of dealing with offenders more effective."

This paragraph in the Queen's Speech opening the new session of Parliament gave rise to a full day of the five-day debate on the Address in the Commons being devoted to the subject. (Full report of this debate will appear in our next issue.) But there were a number of comments during the general debate, on the question of minor offences and the effect upon magistrates' courts.

Mr. Marcus Lipton (Brixton) said he noted with a certain amount of dismay that there was no reference in the Speech to any intention on the part of the Government to do anything about betting shops. The Home Secretary would recall that there was a Commission on that subject, but nothing was being done about it. That was a pity because if, for example, betting shops were instituted as was recommended by the Report, that would go a long way to relieving the police of a distasteful task and the time of magistrates' courts which was taken up year in and year out with cases of street betting. The limited extent to which corruption had crept into the police force was due in no inconsiderable measure to the unsatisfactory state of the betting laws.

He also drew attention to the fact that there was no reference in the Speech to the Wolfenden Report. There was, of course, considerable difference of opinion on the problems involved, but at some time or other action would have to be taken. By and large, the Wolfenden Report provided some basis upon which the Government should introduce legislation.

Mr. R. Ledger (Romford) spoke of the shocking waste of police manpower in the courts in dealing with offences by motorists. It would do a lot to restore good relations between the public and the police if policemen were given a proper job to do.

In the Lords, Lord Silkin said that he hoped he was wrong, but he had read into the Queen's Speech much more emphasis on punishment of crime than on its prevention. There had been a great deal of investigation, without much result, into what were the causes of crime. He did not think that anyone could yet be dogmatic about the causes. There were probably a great many, but he was sure that one cause of crime, possibly among many, was that there was a sporting chance of getting away with it. If detection inevitably followed the commission of a crime, that, of itself, would act as a very great deterrent. But on present figures the odds against being detected were something like one in three.

He suggested that they might make better use of the police force than they were making at the present time in persecuting poor motorists who were forced to use their cars for business purposes and then found that they just did not know what to do with them and had to leave them somewhere, at the risk of finding them either taken away and then having to go and collect them or of being prosecuted for so-called obstruction, when in many cases there was no obstruction at all. The number of members of the police force—certainly in London and the large towns—who were engaged on that form of crime prevention, was very considerable, and if only those police could be used to deal with the prevention of the breaking open of safes and attacks on elderly ladies, and so on, he was sure they would be rendering a much better service to the community than they were rendering at the present time.

The Lord Chancellor said he knew how Lord Silkin felt about the use of police manpower for traffic offences, and he would convey that feeling to the Home Secretary. But a lot of people felt seriously and strongly about the Road Traffic Law. What was necessary at the present time was not only the deployment of personnel but the better use of equipment.

The debates continue.

ERRATUM

We regret that at 122 J.P.N. 702, we announced that "Mr. Norman Barton, deputy town clerk of Lichfield, Staffs., rural district council, has been appointed deputy clerk of Billingham, Co. Durham, urban district council." Unfortunately, we had transposed the place names and Mr. Barton has, of course, left Billingham and is now deputy clerk of Lichfield rural district council. We apologize to Mr. Barton and to any of our readers who have been misled by our announcement.

ANNUAL REPORTS, ETC.

ANNUAL REPORT OF THE BOARD OF CONTROL

The number of patients in mental hospitals in England and Wales again declined last year and at 146,962 had reached the lowest total since 1949. The peak year was 1954 when the total was 152,144. But the admissions increased from 83,994 in 1956 to 88,943 in 1957. These figures were given in the recently issued annual report of the Board of Control. There was a continued increase in the number of voluntary admissions. In 1956, 78·2 *per cent.* of the admissions to designated mental hospitals were voluntary. There were 82·6 *per cent.* in 1957. Of the total admissions 44·9 *per cent.* were re-admissions. Of the 82,778 discharged 19,643 had recovered, in 54,054 cases the illness was relieved, and 8,822 showed no improvement.

On staffing it is stated that while the number of student nurses in mental illness hospitals continued to increase there was still a serious overall shortage of nursing staff. All grades of whole-time staff numbered 20,903 and part-time staff 7,176 at the end of September, 1957, as compared with 20,358 and 6,937 a year earlier. Nearly two-thirds of the trained staff were male but more than half the student nurses were female.

THE NATIONAL TRUST

The council of the National Trust in its report for 1957 points out some of the changes of policy with which the Trust is now confronted as compared with the position when the Trust was formed 63 years ago. On the care of open spaces, at one time the Trust was concerned to expose an indifferent public to the impact of the countryside and to induce them to discover its beauty. Now the Trust is more and more concerned with the impact of the public on the countryside. All too often, the public spoil the open spaces saved for their enjoyment. Litter and occasional hooliganism are not alone responsible. Numbers in themselves create a problem. A given area cannot properly support more than a given number of visitors without strict control. The Trust's responsibility is not only to make areas under their control accessible but to preserve them unspoilt for future generations. This applies particularly to sites used for caravans but on this the view is expressed that provided such sites are naturally screened, strictly controlled and of limited size, they serve an immediate purpose and do nothing to spoil the landscape.

Previous reports stressed the Trust's growing responsibility for the preservation of historic buildings. This has led inevitably to a careful reconsideration of the historic and architectural criteria which the Trust must exercise before embarking on preservation.

Membership of the Trust has continued to grow and is now 70,687 as compared with 61,713 at the end of 1956. But the council hopes to have 100,000 by January, 1960, if its propaganda efforts meet with success.

The report gives interesting information about the various new properties which came under the control of the Trust during 1957. A matter of general interest mentioned in the report is the concern of the Trust at the design and scale of most contemporary street lighting which are described as "deplorable" and far lower than in many continental countries. The council welcome the fact that the Royal Fine Arts Commission and the Council of Industrial Design are giving this problem close attention and hope their views will receive the widest possible publicity. In one instance the council of the Trust was able to convince the Ministry of Transport of the need to alter their views as to the type of lighting on a trunk road. This was in the village of West Wycombe, but it is thought that similar factors exist in certain other villages and it is hoped that the solution at West Wycombe can be regarded as an important precedent. Here the Trust secured the removal of several lamp-posts, and the installation of bracket lighting simple in design and in scale with the houses and the village street.

ANNUAL REPORT OF MINISTRY OF PENSIONS AND NATIONAL INSURANCE

The annual report of the Ministry of Pensions and National Insurance shows that at the end of 1957 the overall cost of social service benefits being paid by the Ministry was at the rate of £900 million a year. As a result of the increase in pensions and benefits early in 1958 this rate rose to £1,080 million a year, comprising about £100 million for war pensions, and about £120 million for family allowances from Exechequer funds, and about £860 million in benefits from the two national insurance funds. Contributions being paid by insured persons and employers to the national insurance and industrial injuries funds were at the rate of £590 million a year at the end of 1957 rising to £780 million in February, 1958. These amounts exclude contributions to the national health service.

In December, 1957, 201,000 persons were receiving unemployment benefit, compared with nearly 168,000 a year earlier. New claims during the year totalled over 2¼ million. Cost of unemployment benefit for the year ended March 30, 1957, was over £20¾ million. New claims to sickness benefit totalled 9,609,000 compared with 7,762,000 in the previous year due largely to the influenza epidemic.

About 424,000 new retirement pensions came into payment during the year; about 112,000 of them to wives of pensioners in right of their husbands' insurance. About 4¾ million people were receiving retirement pensions at the end of the year. Of the total expenditure of £622 million in all national insurance benefits nearly £448 million was on retirement pensions, an increase of over £15 million on the previous year due mainly to the increase in the number of pensioners. At the end of the year about 450,000 men and women had reached minimum pension age during the previous five years but had not retired. They were, generally, earning increments to the pension payable on their eventual retirement. About 37 *per cent.* of those now qualifying for a retirement pension (apart from late-age entrants, who cannot qualify for increments) receive this addition. In the case of men the percentage is 51. Over 400,000 late-age entrants into national insurance including 100,000 wives became entitled to retirement pension on July 7, 1958.

At the end of 1957, 199,000 women were receiving a widow's pension, 138,000 a widowed mother's allowance and over 21,000 widow's allowances were also in payment. There were 768,000 claims for injury benefit as compared with 822,000 the previous year.

Prosecutions for alleged trafficking in used national insurance stamps and other misuse of stamps fell from 346 in 1956 to 271 last year. Criminal proceedings for failure to pay contributions and allied offences totalled 5,595. Legal proceedings were taken against 1,136 persons for offences connected with improper obtaining of benefits and there were convictions in 1,069 cases.

In the year ended March 31, 1957, the income of the national insurance fund was £733¼ millions nearly £588 million in contributions from employers and insured persons and over £96 million in Exchequer contributions, while £49 million was income from investments of this fund and the national insurance (reserve) fund.

COUNTY BOROUGH OF SOUTHEND AND PETTY SESSIONAL DIVISION OF ROCHFORD JUSTICES' REPORT

This interesting report of the work of these benches gives a vivid picture of the amount of dedicated activity demanded from our lay magistrates. The report says that, on the basis of 5,700 man hours of voluntary work performed in court alone during the year 1957, each justice has saved the borough or the county, something like £350 per annum.

Courts sit daily, often more than one at a time, and there is no doubt that the use of two or three courts is a great help to all—public, lawyers and defendants.

The report speaks of a visit paid, under the auspices of the Magistrates' Association, to Belgium and Holland, and comments on the small rôle played in those countries by the clerks in the magistrates' courts. It is pleasing to notice that the Southend magistrates see no advantage to be gained by emulating the continent in this respect, and they are quite ready to acknowledge the debt they owe to their clerk. One gathers that everything is done from the bench in the countries mentioned; one does not have to be very clever to see the disadvantages of this, from the point of view of the judiciary appearing to be over-involved in the conduct of proceedings in which they are called ultimately to give a verdict. Let us keep our admirable, though flexible, division of responsibility as between bench and clerk.

As regards Southend, out of a total of 13,981 cases and applications, only 13 defendants gave notice of appeal to quarter sessions against decisions by the justices. This is a remarkably low proportion: obviously justice has not only been done, but has been *seen* to have been done!

CITY OF LEICESTER PROBATION REPORT

Mr. K. M. Fogg, the principal probation officer, reports an increase in the number of those supervized during the year 1957—679 as compared with 636 for 1956. He also tells us that the percentage of successful cases has fallen slightly, and he thinks this may be due to the transfer of probationers to other officers through changes in staff. It is interesting to read this, for our own impression has been that probation depends very largely upon its success on the formation of a stable relationship in which the probationer may depend upon the confidence of a particular officer over the period of his probation. When a probationer himself changes his address, a transfer of supervision is inevitable, however undesirable it may be in particular circumstances; but it is surely desirable for the probation service to be administered in such a way that transfers from one officer to another, within the same area, should be kept at an absolute minimum.

In his report on the working of the probation hostel at Leicester, Mr. Fogg comments favourably on the facilities afforded by the hostel and upon the general success attending upon conditions of residence. He clearly thinks that in cases of poor home background or unsatisfactory family relationships, re-education which is an important part of probation, especially as regards young people, can be most satisfactorily effected through a condition of residence at a home or hostel.

Difficulties are reported in connexion with after-care cases: "Many have no settled home and the problem of accommodation has been even more difficult than employment . . . whatever the position a year or two ago, it is certainly a more difficult proposition now and becoming more so." We are told that emergency accommodation has frequently to be found in a reception centre, but that this is only available for men, and that the problem presented by destitute women and girls is acute. Here again one sees a gap in the social services of which the public as a whole are largely ignorant. It cannot be too strongly emphasized that the presentation of the welfare state to the public in terms of pounds, shillings and pence, which is so frequently made, obscures the type of problem which social services themselves so often have to meet. However much money is made available to needy individuals, it is accommodation and personal relationships which they most deeply need, and it is here that one so frequently meets with unfortunate discrepancies. The probation service renders conspicuous assistance in filling these gaps, but it is a branch of its activity about which the public know all too little.

CITY OF LIVERPOOL: CHIEF CONSTABLE'S REPORT

Here we have the same sad story as in so many other reports, an 11·3 *per cent.* increase in crime compared with 1956. Housebreaking and shopbreaking showed an increase of 15·5 *per cent.* and stealing on docks and ships increased by 32 *per cent.* In the chief constable's view the increases might well have been greater but for the increased mobility of the force in connexion with crime prevention and detection. One hundred lightweight motor cycles for beat constables have made a substantial contribution to the work of protecting life and property. A brighter aspect of the crime figure is that 139 fewer children were prosecuted or cautioned in 1957, a decrease of seven *per cent.*

The rise in convictions for drunkenness also causes concern as "a good deal of crime is undoubtedly linked with drunkenness."

The actual figures of crimes were 18,747 in 1957 and 16,837 in 1956. Of the 4,327 persons prosecuted 1,337 were juveniles. No fewer than 2,554 of those prosecuted had previously been in trouble for crime.

Traffic problems must always, in these days, occupy a great deal of police time which might otherwise be devoted to crime prevention and detection. It is noted in the report that one of the measures taken to lessen the congestion caused by parked vehicles has been to draft extra police to the business centre of the city during peak hours. In the chief constable's view the problem of congestion through parking "would be solved if one could remove entirely the motorist who leaves his vehicle in the streets for long periods, in some cases all day."

The force has a considerable dog section and an increase of establishment from 40 to 60 dogs and handlers has been authorized to take effect from April 1, 1958. Dogs and handlers effected 88 arrests during 1957, and they have an obvious deterrent effect on crime and hooliganism.

BARBERS AND BABBLERS

It is time some sociological expert tackled the fascinating subject of occupational characteristics. There can be little doubt that these frequently transcend national boundaries and that the similarities, in habit and outlook, among members of the same calling are often more noticeable than the divergences of class, race or sex. English and foreign lawyers have in common the same grave alertness, the same deliberation of speech; naval officers all over the world have the same bluff *aplomb*, the same breezy self-confidence; priests of all denominations are unctuous and bland. Singers and actors who, when they are on the stage, are accustomed to the rapt attention of an audience and, when they are off it, to the adulation of their "fans," are everywhere temperamental, touchy and neurotic. Nor are these resemblances confined to the professions. The successful industrialist, be he British, American, South African or Japanese, has the same air of hard-headed ruthlessness. Tailors and fashion-designers are apt to cultivate a certain mincing preciosity; shoemakers and cobblers are usually patient, genial and refined. Waiters are mostly obsequious and servile; trade-union officials domineering and aggressive. Barbers and hairdressers—and this seems to be a matter of universal experience—are incurably loquacious.

The judgment of the Court of Criminal Appeal, pronounced by Mr. Justice Cassels, in *R.* v. *Williams* (*The Times*, October 13) affords a recent illustration. The appellant, said the learned Judge, "had acquired a gift of expression which, upon his release from prison, he might well turn to honest use." He had rejected the services of counsel, and conducted his own defence. Conviction followed. He had requested an adjournment of the original hearing of his application, for leave to appeal, in a letter 12 pages long; because this was received only the day before the Court's sitting, he had complained that it was not given proper consideration. His original application contained a lengthy argument on the facts, cited several authorities for his propositions of law, and criticized the recorder's conduct of the trial and summing-up. Since then (the judgment proceeded) he had been in constant communication with the registrar—writing long letters, rearguing the whole case, and citing, with references, many authorities. The three Judges had read all these communications, the 12-page letter and the shorthand-transcript. "The case was so plain that the request for an adjournment was not granted, and his application for leave to appeal was refused."

The appellant had then sent the Court another letter, with further argument; he complained that his voluminous earlier letter could not have been properly considered. The Court, both on that occasion and on this further consideration, came to the conclusion that there was no substance in the appellant's complaints and criticisms. It dismissed the application, and said of the appellant (as Disraeli once remarked of Gladstone) that he was "inebriated with the exuberance of his own verbosity." The appellant was, by occupation, a hairdresser.

The garrulity of persons who are attracted to this vocation is traditional. One of the best known of *The Thousand and One Nights* (translated from the Persian into Arabic about the year 850) is *The Tale of the Lame Young Man and the Barber of Baghdad*. It is a fine study of frustration. Being

in love, and about to visit his mistress, the young man of the story sends for a barber to call and shave him. When the practitioner arrives, the young man explains that the matter is urgent, and asks him to proceed with the utmost dispatch. To this the barber replies:

"May Allah preserve you from all misfortune, all distress, all grief and all sorrow! Now tell me, Sir, do you wish to be shaved or bled? You doubtless know that the famous Ibn Abbas (may Allah rest his soul in peace!) has said: 'He who has his hair cut on a Friday shall ward off 70 calamities.' And to the same authority is also attributed the maxim: 'To let blood on a Friday averts weakness of sight and a host of other diseases!'"

The young man expresses some natural impatience at this opening, whereupon the barber takes out of his bundle an astrolabe, carries it into the courtyard, raises it towards the sun and gazes intently at the reflection for a long time. Then he returns to his customer and solemnly declares:

"Know that, of this day, Friday the tenth of Safar in the year 253 after the Flight of the Prophet (upon whom be Allah's blessing and peace!) and 1231 in the year of Alexander the Great, there have elapsed eight degrees and six minutes; and that, according to the strictest rules of computation, the planet Mars, in conjunction with Mercury, is this day in the ascendant—all this denoting an auspicious moment for hair-cutting. Furthermore, my instrument manifestly informs me that it is your intention to pay a visit to a certain person, and that of this nothing shall come but evil. Allah has sent you one who is not only a barber of great repute, but also a master of the arts and sciences; one not only versed in alchemy, astrology, mathematics and architecture, but also (to mention only a few of my accomplishments) well schooled in logic, rhetoric and elocution, the theory of grammar, and the commentaries on the Koran."

And so the interview proceeds, until the young man, in a frenzy of impatient rage, has to bribe the barber to finish his task, and leave him in peace, by offering him all the food, drink and money in his house. The scene is skilfully brought to a climax in true oriental style.

The most famous hairdresser in western literature is Figaro, the Barber of Seville. This character, created in a play of that name by Pierre Augustin Caron de Beaumarchais in 1772, is not merely loquacious, but wittily impudent and saucily subversive. The play was banned in Paris for three years before it could be produced; its successor, *The Marriage of Figaro*, was completed in 1778 but kept off the stage until 1784. Both were acclaimed, by the progressive intellectuals, with wild enthusiasm. Beaumarchais himself boasts:

"In *The Barber of Seville*, the authorities said, I had shaken the fabric of the State; in the *Marriage of Figaro*, more infamous and more seditious still, I was overturning the established order to its very foundations. Nothing sacred would be left if they allowed this piece to be played."

But played it was, and the forces that compelled King, Government and Church to give way to its popular appeal were those which were destined, five years later, to spark off the French Revolution.

Figaro, as he tells Count Almaviva, had once been a literary man:

"But I soon saw that the republic of letters was really a community of wolves, devouring one another; exposed to the contempt excited by this ridiculous animosity, I saw all the insects—mosquitoes, wasps, horseflies, reviewers and critics—the envious, the pamphleteers, the publishers, the censors—all attaching themselves to the skin of the wretched author and sucking away the little blood he has left. In the end, tired of writing, bored with myself, disgusted with the rest of the world, smothered in debts and with empty pockets, I became convinced that the useful earnings of the razor are preferable to the vain honours of the pen—and so I became a barber!"

Forty years after *The Marriage of Figaro*—in 1824—James Morier, diplomat, traveller and humorist, published *The Adventures of Hajji Baba of Isfahan*. Space will not permit of quotation, but the plausable loquacity of the Barber of Baghdad, and the cynical wit of the practitioner of Seville, are well combined in Morier's picaresque novel of the rascally Persian Barber. The book was a best-seller for many years, and presents an interesting contemporary picture of the Orient that its author knew so well. The recent case in the Court of Criminal Appeal shows that the craft has lost none of its ancient cunning.

A.L.P.

SHORTER NOTICES

Wear and Tees River Board

This report seems (as are most river board reports) primarily concerned with prevention of pollution, and it is stated that no alterations have been made to the working standards and that the board is still of the opinion that there is no advantage to be gained at the present time by formulating byelaw standards under s. 5 of the 1951 Act, for any stream or part of a stream, although full use is made of the consent provisions of s. 7. It is the board's policy to carry out their prevention functions by persuasion and friendly negotiations although where it is suspected that patient administration is interpreted as a sign of weakness stronger action is taken.

Lake District National Park

The sixth annual report contains an interesting account of the social changes which have taken place since the last decade of the last century and of the first two decades of this present century, and today. In those times, the report says, it was not uncommon for leading industrial and commercial magnates to have their homes in the Lakes. They built large houses with elegant grounds where there was ready access to a railhead, but now there is no desire for this size of house. The result is that the Board is not infrequently granting permissions for the building of groups of small houses of half a dozen or more, in what were the grounds of a single mansion. In other directions also, the report makes interesting reading.

Lancashire Branch of the Council for the Preservation of Rural England

This report is a well-produced booklet of nearly 50 pages, and covers the remarkably wide range of the branch's activities over the previous year. The report discloses that, for the first time, the branch found itself formally opposed to Lancashire county council, on the question of the siting of a warehouse. In the final event, following a public local inquiry, the Minister refused consent.

Usk River Board

The annual report contains, in addition to the usual statistical matter, an extensive section on fisheries. The season was a very poor one, yet faced with a further substantial call on the precept in respect of fishery functions, an application to increase the rod and line trout fishing licence has been made, and the outcome to the public inquiry by the Ministry of Agriculture, Fisheries and Food is still awaited. The report contains an interesting section on insect and mollusc life in 1957.

NOW TURN TO PAGE 1

In any case where a court has power to commit a person brought before the court to the care of a fit person, the assent of the local authority shall not be required for the making by the court of an order committing him to the care of the authority unless a probation order or supervision order is in force or the court proposes to make such an order at the same time as the order committing the child to the care of the authority. Although the assent of the local authority to such an order is not generally required, the authority must be permitted to make representations which must be considered by the court, unless the making of such representations would involve undue delay. (Children and Young Persons Act, 1933, s. 76 as amended by Children Act, 1948, s. 5.)

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Child received into care—Mother in mental hospital—Treasurer of county council appointed receiver—Duty of justices.*

In 1949 A obtained an affiliation order against B, and B was ordered to pay to A, through the collecting officer at R (now the clerk to the justices at R) the sum of 15*s.* a week until the child attained 16 years.

Subsequently the child was received into the care of the X county council under the Children Act, 1948, and is still in the county council's care. In 1954 the county council obtained a contribution order against A in respect of the child. After the date of that order, A became a patient at a mental hospital.

In April, 1958, the court of protection appointed the treasurer of the county council receiver of A's income under 53 Vict. c. 5, and the order provides that the receiver can:

(*a*) give a receipt for "all allowances payable to the patient" under the affiliation order;

(*b*) receive and give a discharge for £20 in the hands of the clerk to the justices at R at the date of the order of the court of protection (the £20 having been received from the putative father and not handed over to A);

(*c*) in A's name to request the clerk to the justices at R to enforce payment of arrears under the affiliation order, and to apply those arrears as the master directs.

Can the clerk to the justices at R, with safety, (i) pay the £20 he has in hand to the receiver; (ii) pay future money received by him under the affiliation order to the receiver; (iii) take steps to get a warrant issued at the receiver's request for arrears due from B under the affiliation order?

No order has been made under s. 88 of the Children and Young Persons Act, 1933. HESSEL.

Answer.

We think that the answer to all three questions is yes.

2.—Criminal Law—*Fishing—Seizure of tackle under Larceny Act, 1861—Lessee as owner—Authority to other persons to seize.*

I was interested in the point raised by your correspondent in P.P. 2 at 122 J.P.N. 423, because when complaints are received about fish poaching I have referred them to s. 25 Larceny Act, 1861, which authorizes the seizure of tackle for the use of the owner. Sometimes these complaints are made, not by the owners, but by persons who have taken the fishing rights on a lease.

Can you please advise:—

(*a*) Would a lessee be held to be the owner?

(*b*) Could the authority to seize the tackle be given orally?

(*c*) Would a written authority to police officers and water bailiffs be acceptable or would it be necessary to authorize each individual member of these bodies?

I appreciate that seizure of tackle is a bar to proceedings when the offence is committed in the daytime, but the certain loss of valuable tackle is in some areas likely to be a greater deterrent than court proceedings, to say nothing of the costs and time saved. KONOR.

Answer.

(*a*) This is a matter on which opinions may differ but in our opinion "owner" means the real owner and does not include the lessee or other person in temporary possession.

(*b*) Yes.

(*c*) Provided that the authority given clearly includes the person acting thereunder we do not think that an individual authorization is necessary.

3.—Criminal Law—*Removal of trap-door in gangway—"Not properly maintained"—Factories Act*, 1937, *s.* 25 (1).

The following statement of facts was included in the charge made at my court recently in a prosecution under the above Act: "the said occupiers contravened the provisions of s. 25 (1) of the Factories Act, 1937, in that a certain gangway in the said factory, to wit the gangway connecting the confectionery bakery building and the bread bakery building at first floor level, was not properly maintained, and that in consequence of that contravention one M. I. C. suffered bodily injury, whereby the said occupiers are liable to a penalty as provided by s. 133 of the Factories Act, 1937."

At the hearing, the following facts were proved: A gangway was erected between two buildings. The gangway was about 15 *ft.* above the ground and in the gangway there was a trap door. The trap door was damaged and it was removed for repair. A door let on to the gangway and the door was bolted but the bolt was easily removed. An employee was warned about the repairs. Despite this warning she went along the gangway and fell through the opening.

The defence submitted that as the gangway was under repair that they were complying with the Act. The prosecution submitted that there was an absolute duty to keep the gangway in repair.

May I be informed whether an offence was committed under s. 25 (1) of the Factories Act? BROWN.

Answer.

We consider that this is a matter of fact for the justices to decide. It seems difficult to hold that a gangway to which access was possible was properly maintained if the trap door was absent. The position might have been different if access to the gangway had been made impossible because then, in our opinion, the gangway could no longer have been described as "a gangway."

4.—Justices' Clerks—*Fees—Indictable offences—Accused not committed for trial—No written information—Nine offences set out in one summons form—Appropriate fee?*

I should very much welcome your opinion as to what fees should be charged in the following circumstances:

A person is summoned in respect of nine charges of fraudulent conversion. There is no written information, and the charges are all set out in one summons.

At the hearing the accused elected to be tried by a jury, but the magistrates decided that no *prima facie* case had been established and the accused was discharged.

Do you agree that the only fee in this case is 1*s.* 6*d.* for the summons and copy. MARNAS.

Answer.

Before a summons can be issued information must be laid, either orally or in writing, and a fee of 1*s.* is chargeable for the information.

We think it is right to treat this as one information as we assume that what was alleged was a course of conduct which involved the commission of nine separate but similar offences. We think that the correct fee is 2*s.* 6*d.*, *i.e.*, 1*s.* for the information and 1*s.* 6*d.* for the summons and copy.

5.—Landlord and Tenant—*Council houses—Increase of rent—Necessary steps.*

I have read with interest your answers to questions at 120 J.P.N. 188 and 638 and at 122 J.P.N. 475 on the procedure to be adopted in regard to increasing the rents of council houses and am, if I may respectfully say so, in entire agreement with your view that the most desirable procedure is by way of notice to quit and a fresh agreement properly executed and stamped. My practical difficulty, however, has been that my council are the owners of such a large number of houses (in the region of 10,000) that the preparation, execution and stamping of new agreements on the occasion of every increase in rent would involve a well-nigh impossible volume of work, and the expenditure of a very large sum of money on the stamping of the new agreements and new guarantees by sureties. It has, therefore, been our practice to serve a notice to quit accompanied by a letter stating that if the tenant remains in occupation of the premises after the expiration of the notice it will be taken that he accepts the altered rent as a future condition of the tenancy. Such an alteration presumably releases the sureties from their obligation, and it has been considered preferable that they should be so released rather than to prepare and stamp so many new contracts of guarantee.

I have, however, been considering the possibility of alternative methods of procedure which might preserve at least the original tenancy agreement and, if possible, the original contract of guarantee, and one method which occurs to me is that a clause such as the following should be included in all new agreements:

"The tenant shall pay to the council the weekly rent of plus rates on the of every week during the tenancy, the first payment to be made on . It is hereby agreed that the council may by resolution increase or reduce the said weekly rent and the said rent as so varied shall become payable upon the expiration of one week from the service on the tenant of a notice setting out the amount of such increase or reduction."

The sureties in their original contract would then guarantee to the council the payment of all rent that would accrue due until possession of the premises had been delivered up. If necessary a maximum amount of weekly rent could be included in the guarantee beyond which the sureties would not be liable without their further agreement.

I appreciate that such provisions would be very unusual, that it might be argued that the rent reserved was not sufficiently definite (although it appears to be sufficient if a means is provided whereby the rent can be defined) and that, in any event, difficulties could arise in connexion with the service of the necessary notice of variation and the subsequent proof of such service. On the whole, however, if such an agreement were enforceable it would have many advantages from the council's point of view. So far as the tenants are concerned their interests would not be prejudiced by secret or hastily conceived decisions, since any proposed increases of rent are always exhaustively considered in committee, and subsequently at open meeting of the full council. Needless to say, such proposals always receive a great deal of press publicity both before and after a decision has been taken.

I shall be glad to have your opinion on the above suggestions.

A. MUDAV.

Answer.

We have never under-rated the problems involved in formally terminating tenancies and creating new tenancies, when a general increase of rent was being made. Nor do we overlook the fact that, although local authorities are in no worse position in law than other owners of large blocks of property, some of them in fact own more house property than anybody else.

However, the expedient described in your query seems to us unsound, although it might work in practice with most tenants, as did the method which came to grief in *Bathavon R.D.C.* v. *Carlile* (1958) 123 J.P. 240; [1958] 1 All E.R. 801. We regard it as unsound in law, and doomed to fail if challenged by a tenant, because (as the penultimate paragraph of your query recognizes) it is a rule of law that rent must be certain. You remind us in parenthesis that *certum est quod certum reddi potest*, and there are several decisions given in text books in which this maxim has been applied to rent. But it has never, so far as we have found, been held that rent could be rendered certain unilaterally by the landlord.

It is doubtless true that tenants of a local authority are, as you say, protected by the normal processes of local government from secret or hastily conceived decisions, such as might be sprung upon them by a private landlord, but this seems to be beside the point: we do not suppose that local authorities who have been unsuccessful in the courts had done anything secret or hasty. The crux is, surely, as we said at p. 179, *ante*, that it takes two to make a bargain, and that the bargain by which a person agrees to pay rent must, in order to be enforceable, be a bargain to render money or money's worth, of a value initially (or to be subsequently) determined by some ascertainable fact or occurrence.

Where the courts have come nearest to allowing unilateral determination has been where a rent has been variable according to the use made of the land, *e.g.*, *A.-G. for Ontario* v. *Canadian Niagara Power Co.* [1912] A.C. 852; *Daniel* v. *Gracie* (1844) 6 Q.B. 145; *Walsh* v. *Lonsdale* (1882) 46 L.T. 838, but in all cases of this sort the circumstance determining the amount rested in the tenant's control, not upon the landlord's option.

6.—Licensing—*Registered club—Struck off register—Order disqualifying premises for occupation by any registered club—Effect of order on another club occupying same premises.*

Proceedings were brought by the police against the secretary (S. 1) of a registered club (club 1) to show cause why it should not be struck off the register. The secretary (S. 1) applied at the hearing for an adjournment, which was granted. Before the adjourned hearing, S. 1 wrote to the clerk to the justices intimating that the club (club 1) had ceased to exist. A few days later the clerk received an application for registration by the secretary (S. 2) of a new club, the club premises being the same as those of club 1, but the secretary was not the same person as S. 1, the premises of club 1 having been sold to S. 2 since the date of the first hearing. The clerk was of opinion that he was obliged to register club 2 and did so. At the adjourned hearing the solicitor for club 1 intimated that there was no objection to club 1 being struck off the register. The court made an order striking off club 1 but further ordered that the premises should not be occupied or used for the purposes of any registered club for a period of twelve months.

Secretary 2 has supplied intoxicating liquor in club 2 since the date of the court order and is under the impression that as he occupied the premises before the order of disqualification was made, club 2 is not liable to be struck off, relying on s. 144 (1) (*f*) of the Licensing Act, 1953. He further maintains that since he cannot be struck off he is entitled to supply his members.

Do you agree with the contention of S. 2 or does he render himself liable to prosecution under s. 120 of the Act? I should be obliged if you could refer me to any authority on this point.

NIP.

Answer.

In our opinion, an order made under s. 144 (4) (5) of the Licensing Act, 1953, providing that premises occupied by a club shall not be occupied and used for the purposes of any registered club for twelve months, operates to nullify the registration at that address, as from the date of the order, of a registered club which has taken over the occupation of premises from another club during the pendency of proceedings against that other club which culminate in that other club being struck off the register by an order made in accordance with s. 144 (1) of the Act.

The case in point differs from what is contemplated by s. 144 (1) (*f*) of the Act: here we have not a club that was registered at "disqualified" premises (which would be a reason for striking it off the register) but a club actually in occupation at the time of the making of the order which incapacitated the premises for occupation and use by any registered club.

The club now in occupation of these premises remains a registered club; so to speak, of no fixed abode. Of the matters concerning which particulars must be given in the return furnished under s. 143 (2) (*a*) to (*e*), all continue valid except (*b*), *i.e.*, the address of the club: it is this that is nullified by the court's order.

Therefore, in our opinion, the operations of the club at that address are the operations of an unregistered club and proceedings will lie under s. 123 of the Act.

The point seems never to have arisen before.

7.—Magistrates' Courts Act, 1952—*Trial of child charged jointly with an adult.*

With reference to the last paragraph of the report of proceedings under the title "Woman chooses trial by jury," at 122 J.P.N. 519, could you please let me know the procedure under which a boy aged 13 years can be dealt with summarily under the following circumstances.

The child is jointly charged with another boy aged 14 years and an adult aged 35 years with office-breaking and housebreaking.

I have studied ss. 21, 46 and 56 of the Magistrates' Courts Act, 1952, but as the adult had to be committed for trial and the magistrates sat as examining justices all three were committed for trial as there appeared to be no way in which the child and young person could be remitted from the summary court to the juvenile court to be dealt with, unless the charges against the adult were heard separately.

I would thank you for your assistance in this matter.

Q.P.G.M.

Answer.

The proviso to s. 21 (1) is permissive only, and does not require a court to commit a child for trial with the adult with whom he is jointly charged unless it considers it necessary in the interests of justice.

So far as the boy of 14 is concerned, s. 20 applies, and the court may at any time during the inquiry proceed with a view to summary trial if the provisions of that section are observed.

In our opinion the court may commit the adult for trial and, if satisfied that it is in the interests of justice to do so, deal with the child and the young person itself, or remit the case to the appropriate juvenile court under s. 56 of the Children and Young Persons Act, 1933. It would be necessary for the court to be fully constituted, and it might be necessary to adjourn the trial for that purpose under s. 14 of the Magistrates' Courts Act, 1952.

The reference to ss. 46 and 56 of the Magistrates' Courts Act, 1952, is not understood, as both of these sections relate to civil jurisdiction and procedure.

8.—Magistrates—*Bias—Widow of solicitor formerly practising in the Division.*

A is a justice of the peace for the petty sessional division of which I am clerk. Her husband was a solicitor carrying on business for many years under the name of A. B. X. & Co. He has recently died. His firm has a substantial practice in my court. Whilst he was alive Mrs. A did not adjudicate in cases in which either Mr. A or his partners appeared.

The question has now arisen whether, since Mr. A's death, Mrs. A is free to adjudicate in cases in which the surviving partners appear. The firm is still known as A. B. X. & Co.

In this connexion the following points occur to me:

(*a*) It is not known whether Mrs. A. is to continue to derive any financial benefit from the firm, or whether she will completely sever her connexion with it.

(*b*) Whether connected with it or not she will always be associated with the firm by the general public, as her husband was, and she is, prominent in local affairs.

I shall, therefore, be glad to have your opinion on the following:

1. Is it proper for Mrs. A to adjudicate in cases in which the firm of A. B. X & Co. is concerned, if she now receives no pecuniary benefit from the firm?

2. Is it proper for Mrs. A to adjudicate in such cases if she receives pecuniary benefit from the firm?

3. Generally.

X. PHILOS.

Answer.

1. She is not disqualified, but we think she ought not to sit in such cases.

2. No.

3. We think a justice should not adjudicate in any case in which one of the parties might reasonably think that the justice could not be unbiassed. (*See Cottle* v. *Cottle* [1939] 2 All E.R. 535, and our answer to P.P.7 in 117 J.P.N. 436.)

9.—Rating and Valuation Act, 1925, s. 11 (2)—*Effect of a closing order—Compounding agreement.*

It has been the practice by the borough council over many years past to enter into compounding agreements with owners of certain properties in the town, in accordance with s. 11 (2) of the Rating and Valuation Act, 1925, the effect of which is that rates are payable on the properties whether occupied or not.

Certain of these properties have been included in the council's slum clearance programme. No difficulty arises where a demolition order has been made, as the property is demolished and ceases to exist. Where however the council make a closing order under the Housing Act, 1957, and when the house in due course becomes empty it cannot normally then be re-occupied, and the question arises whether the compounding agreement can still be enforced. Similarly, where, although no order has been made, the council are contemplating such action under the Housing Act, 1957, the owner is occasionally asked to give an undertaking in writing not to relet the property.

Provision is made in s. 11 (3) of the Act of 1925 for the termination of this agreement, but clearly it contemplates the giving of a lengthy notice.

1. Will a closing order made by the council under the Housing Act, 1957, have the effect of excluding the property from a compounding agreement from the date on which the house is vacated in accordance with the closing order?

2. Does an undertaking of the kind referred to above have the same effect as a closing order?

3. If the answer to either 1 or 2 is in the negative and the rates are therefore still payable on the properties would any action by the council in passing a resolution relieving the owner of the rates in either cases be considered *ultra vires*?

DURUST.

Answer.

1. We think not. The closing order under the Housing Act, 1957, does not preclude occupation of the house for other purposes than human habitation, nor does s. 11 of the Rating Act, 1925, speak of occupation for human habitation alone.

2. We do not think it makes any difference for this purpose whether there is an undertaking or a closing order.

3. The owner or the council can give notice under s. 11 (3) of the Act of 1925, but (as you say) this takes time. The owner's remedy is to move for an alteration of the valuation list, so as to substitute a lower assessment, on the footing of the restricted use of the building. Pending this, it might be considered unreasonable to enforce payment, and we do not regard the risk of audit action as serious, if the council defer recovery until the list is altered or until the notice under s. 11 runs out.